

## § 223.1

## 12 CFR Ch. II (1–1–08 Edition)

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AUTHORITY: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c–1(e), 1828(j), and 1468(a).

SOURCE: 67 FR 76604, Dec. 12, 2002, unless otherwise noted.

## Subpart A—Introduction and Definitions

### § 223.1 Authority, purpose, and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (Board) has issued this part (Regulation W) under the authority of sections 23A(f) and 23B(e) of the Federal Reserve Act (12 U.S.C. 371c(f), 371c–1(e)).

(b) *Purpose.* Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1) establish certain quantitative limits and other prudential requirements for loans, purchases of assets, and certain other transactions between a member bank and its affiliates. This regulation implements sections 23A and 23B by defining terms used in the statute, explaining the statute's requirements, and exempting certain transactions.

(c) *Scope.* Sections 23A and 23B and this regulation apply by their terms to “member banks”—that is, any national bank, State bank, trust company, or other institution that is a member of the Federal Reserve System. In addition, the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) applies sections

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23A and 23B to insured State non-member banks in the same manner and to the same extent as if they were member banks. The Home Owners' Loan Act (12 U.S.C. 1468(a)) also applies sections 23A and 23B to insured savings associations in the same manner and to the same extent as if they were member banks (and imposes two additional restrictions).

### § 223.2 What is an "affiliate" for purposes of sections 23A and 23B and this part?

(a) For purposes of this part and except as provided in paragraphs (b) and (c) of this section, "affiliate" with respect to a member bank means:

(1) *Parent companies.* Any company that controls the member bank;

(2) *Companies under common control by a parent company.* Any company, including any subsidiary of the member bank, that is controlled by a company that controls the member bank;

(3) *Companies under other common control.* Any company, including any subsidiary of the member bank, that is controlled, directly or indirectly, by trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the member bank or any company that controls the member bank;

(4) *Companies with interlocking directorates.* Any company in which a majority of its directors, trustees, or general partners (or individuals exercising similar functions) constitute a majority of the persons holding any such office with the member bank or any company that controls the member bank;

(5) *Sponsored and advised companies.* Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the member bank or an affiliate of the member bank;

(6) *Investment companies.* (i) Any investment company for which the member bank or any affiliate of the member bank serves as an investment adviser, as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(20)); and

(ii) Any other investment fund for which the member bank or any affiliate of the member bank serves as an

investment advisor, if the member bank and its affiliates own or control in the aggregate more than 5 percent of any class of voting securities or of the equity capital of the fund;

(7) *Depository institution subsidiaries.* A depository institution that is a subsidiary of the member bank;

(8) *Financial subsidiaries.* A financial subsidiary of the member bank;

(9) *Companies held under merchant banking or insurance company investment authority—*(i) *In general.* Any company in which a holding company of the member bank owns or controls, directly or indirectly, or acting through one or more other persons, 15 percent or more of the equity capital pursuant to section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) or (I)).

(ii) *General exemption.* A company will not be an affiliate under paragraph (a)(9)(i) of this section if the holding company presents information to the Board that demonstrates, to the Board's satisfaction, that the holding company does not control the company.

(iii) *Specific exemptions.* A company also will not be an affiliate under paragraph (a)(9)(i) of this section if:

(A) No director, officer, or employee of the holding company serves as a director, trustee, or general partner (or individual exercising similar functions) of the company;

(B) A person that is not affiliated or associated with the holding company owns or controls a greater percentage of the equity capital of the company than is owned or controlled by the holding company, and no more than one officer or employee of the holding company serves as a director or trustee (or individual exercising similar functions) of the company; or

(C) A person that is not affiliated or associated with the holding company owns or controls more than 50 percent of the voting shares of the company, and officers and employees of the holding company do not constitute a majority of the directors or trustees (or individuals exercising similar functions) of the company.

(iv) *Application of rule to private equity funds.* A holding company will not be deemed to own or control the equity